

**RESOLUTION No. R-12-2018**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF KENSINGTON  
EXTENDING A CONTRACT WITH MAIER WARNER PUBLIC RELATIONS, LLC TO SERVE AS  
MARKETING AND PUBLIC RELATIONS REPRESENTATIVES FOR THE TOWN**

**WHEREAS**, pursuant to Article 4 of the Town Code all purchases exceeding \$10,000 shall be approved by the Town Council, and all contracts exceeding \$30,000 shall be put out to bid; and

**WHEREAS**, the Town has previously contracted with Maier Warner Public Relations, LLC ("Maier Warner"), after a solicitation of proposals to perform marketing and public relation services; and

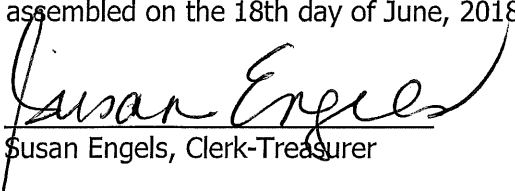
**WHEREAS**, the Council has determined pursuant to Section 2-404 of the Town Code that it is in the public interest to continue the services with Maier Warner through Fiscal Year 2018-2019 without a formal bid process at an annual fee of \$41,200 for services, and an additional \$18,270 for specific items, in accordance with the provisions of a contract in substantially the form attached and Attachment "A".

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Town of Kensington that an agreement with Maier Warner, in substantially the form attached, together with Attachment A entitled "Proposal for Town of Kensington 2018/2019 Explore Kensington Campaign" and attached hereto, at a not to exceed contract price of \$59,470, be and it is hereby approved for one year from July 1, 2018 through June 30, 2019. The Town Manager is authorized to sign the approved contract.

**THIS RESOLUTION WAS ADOPTED** by the Town Council of Kensington, in public meeting assembled, on this 18th day of June, 2018.

  
\_\_\_\_\_  
Tracey C. Furman, Mayor

This to certify that the foregoing Resolution was adopted by the Town Council in public meeting assembled on the 18th day of June, 2018.

  
\_\_\_\_\_  
Susan Engels, Clerk-Treasurer

## CONTRACT FOR SERVICES

**THIS CONTRACT**, is effective the 1st day of July, 2018, by and between the **TOWN OF KENSINGTON**, a municipal corporation organized and existing under the Laws of Maryland, hereinafter referred to as the "**Town**," and **Maier & Warner Public Relations, LLC**, hereinafter referred to as the "**CONTRACTOR**".

### WITNESSETH:

**WHEREAS**, the Town desires to obtain professional public relations services to spur the revitalization of the Town, especially its business and development opportunities, while promoting appreciation and use of its historic structures, to raise awareness of the current opportunities in Kensington for shopping, dining, arts, special events and business development; to promote Kensington to spur future development as a destination for shoppers, diners, special events, business retailers and developers; and develop a strategy/plan to continue achieved goals of above; and

**WHEREAS**, the Town wishes to retain the services of a Contractor as an independent contractor to perform said services in accordance with the terms and conditions set forth herein:

**NOW, THEREFORE**, in consideration of the covenants and promises hereinafter set forth, the parties hereto agree as follows:

#### 1. SCOPE OF SERVICE

The Contractor agrees to supply services described and be bound by the terms and conditions set forth in Proposal for Town of Kensington attached hereto and made a part hereof and identified as **Attachment "A"** (the "Scope of Work"), provided, however, that in the event any terms of the Scope of Work conflict with this Contract, the terms and conditions of this Contract shall prevail. Contractor shall perform the services described in this Contract in a timely, diligent, and professional manner in accordance with recognized standards of the applicable industry or profession. Contractor shall not present material, written or otherwise, to any third parties unless has previously approved by the Town of Kensington, of the content of such materials.

**As part of the Scope of Service, the Contractor shall:**

- a. provide detailed monthly invoices reflecting work performed under the Contract,
- b. provide quarterly reports to the Mayor and Council describing the Contractor's activities and suggestions, and
- c. attend Revitalization Committee meetings??.

#### 2. COMPENSATION

The Contractor shall be paid the total sum of \$39,400.00 for the basic services under this contract as described in Attachment A, payable in equal monthly installments over a twelve month period. Additional services described in Attachment A may be requested by the Town for a total cost of \$13,600.00. Payment shall be made within thirty (30) days of receipt of an invoice. Any work to be performed by Contractor or its subcontractors that is not within the scope of work of this contract and would be separately billed must be approved in advance by the Town.

#### 3. TIME FOR PERFORMANCE

The work shall be performed in an ongoing, as appropriate basis, as determined by the agreement of the parties.

#### 4. CONTRACT TERM

The term of the contract is July 1, 2017 through June 30, 2018. This Contract may be extended by the Town on the same terms and conditions for up to three (3) additional one (1)-year extensions.

#### 5. TIME OF ESSENCE

The Contractor acknowledges that time is of the essence in providing the services under this Contract.

#### 6. INVOICES

Requisitions for payment shall include a complete description of the services rendered by the Contractor, providing the dates services were rendered, and a description of services rendered.

**7. INDEPENDENT CONTRACTOR:** The Contractor shall perform this Contract as an independent contractor and shall not be considered an agent of the Town, nor shall any of the Contractor's employees or agents be subagents of the Town.

#### 8. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract the Contractor agrees that it will comply with all applicable federal, state, and local laws relating to discrimination in employment.

#### 9. REVIEW BY TOWN

The Contractor agrees that the work and records covered by this Contract will be subject to review, at all times, by representatives of the Town, including but not limited to expense records.

#### **10. DOCUMENTS, ETC.**

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, letters and reports prepared by the Contractor or its subcontractors shall become the property of the Town. Contractor acknowledges and agrees that any materials, written or otherwise, produced or created by or on behalf of Contractor in connection with this Agreement, including those in electronic form, shall be considered "work for hire" and shall become and remain the property of the Town of Kensington upon payment of Contractor's fee under this Agreement for such materials.

#### **11. CONFIDENTIALITY**

In connection with the provision of services described herein, the Town of Kensington may provide to Maier & Warner, and its employees and advisors, certain Confidential Information (as defined below) relating the Town of Kensington's business operations. In consideration of this Agreement, Contractor, for itself and on behalf of its employees and agents, hereby covenants and agrees as follows:

- a. "Confidential Information" as used in this Agreement will mean any and all information disclosed by the Town to Contractor whether or not it is marked or otherwise identified orally or in writing by the Town as confidential or proprietary.
- b. Confidential Information and other materials furnished to Contractor by the Town will remain the property of the Town. Contractor will promptly return all documents and other tangible material or medium containing or representing such Confidential Information upon the expiration of the term of this Agreement.

#### **12. INDEMNIFICATION**

The Contractor shall indemnify and save harmless the Town, its representatives, agents, and employees, from all suits, actions, liability, damages, expenses (including, but not limited to court costs and attorneys' fees), and demand for personal injury or property damage, and other expenses or losses suffered or arising out of or caused by any negligent or intentional act or omission, or failure to perform, of the Contractor, or the Contractor's, employees, servants, agents, or permitted subcontractors. So much of the monies due or to be become due to the Contractor under the Contract shall be retained by the Town in such amount as may be considered necessary by the Town until such suits or claims for damages have been settled or otherwise disposed of and satisfactory evidence to that effect has been furnished to the Town.

**Subject to and without waiving common law and other governmental immunities and the provisions §5-301 et seq., Local Government Tort Claims Act, Courts and Judicial Proceedings Article, Annotated Code of Maryland,** the Town agrees to indemnify and hold harmless Contractor from and against all losses, claims, damages, expenses or liabilities which it may incur based on information, representation, reports or data furnished to Contractor by the Town, to the extent that such material is furnished, prepared, approved and/or used by Contractor at the direction of or as approved by the Town.

#### **13. TERMINATION FOR CONVENIENCE**

The Town may terminate this Contract for convenience by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. If the Contract is terminated by the Town as provided in this section, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made.

#### **14. TERMINATION FOR CAUSE**

If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the Town shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. Notwithstanding the above, the Contractor shall not be relieved of liability to the Town for damages sustained by the Town by virtue of any breach of this Contract by the Contractor, and the Town may withhold any payments for the purpose of setoff until such time as the exact amount of damages due the Town from the Contractor is determined.

#### **15. COMPLIANCE WITH LAWS**

The Contractor shall observe and comply with all federal, state, county and local laws, ordinances and regulations that affect the work to be done herein, and shall indemnify and hold harmless the Town, and all of its representatives, agents, and employees against any claim or liability from or based on the violation of any such law, ordinance, or regulation, whether by the Contractor, the Contractor's employees, agents, or permitted subcontractors, and their employees and agents. Notwithstanding the foregoing, in the event that the Contractor determines that a conflict exists between any applicable law, ordinance, and/or regulation, the Contractor will so advise the Town and the Town will decide which law, ordinance, and/or regulation shall be followed. The Contractor will be responsible for obtaining and maintaining any and all required registrations and licenses pertaining to performance of services under this Contract.

#### **16. SUBCONTRACTING**

None of the services covered by this Contract shall be subcontracted without the prior written consent of the Town. Any request for consent to subcontract any portion of the work shall include:

- 1) a description of the items to be subcontracted;
- 2) all subcontractor names, addresses and telephone numbers; and
- 3) the qualifications of the subcontractor.

If the Town consents to subcontracting, the Contractor shall be fully responsible to the Town for the negligent act, error, or omission, intentional wrongful act, intentional misconduct, or failure to perform of the subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent and intentional acts and omissions of persons directly employed by the Contractor. There shall be no contractual relationship between the Town and any subcontractor. The Contractor will require all subcontractors to have in effect at all times insurance coverage for negligent acts, errors, and omissions of subcontractors and their employees and the Town shall be named as an insured party.

#### **17. SUCCESSORS AND ASSIGNS**

This Contract shall be binding and inure to the benefit of all successors and permitted assigns of the parties hereto. Notwithstanding the foregoing, the Contractor shall not assign or transfer any interest in this Contract without the prior written approval of the Town which may be withheld in the Town's sole and absolute discretion.

#### **18. CONFLICTS OF INTEREST**

The Contractor covenants that it has presently no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required to be performed under this Contract. The Contractor further covenants that in the performance of this Contract, no person having any such interest thereof, shall be employed during the terms of this contract.

#### **19. CAPACITY TO PERFORM**

The Contractor, by executing this Contract, represents that all equipment necessary for providing the described services is in working order, that materials needed are now in stock or will be available so as not to delay timely performance, and that all personnel needed are available or will be available by the date work is to commence.

#### **20. INSURANCE**

The Contractor shall carry adequate worker's compensation coverage for all employees performing work under this Contract. The Contractor shall carry and maintain general liability and automobile liability coverage of at least \$500,000 per occurrence and \$500,000 in the aggregate for bodily injury, and \$250,000 per occurrence and \$250,000 in the aggregate for property damage, and shall provide to the Town certificates of insurance evidencing the same. The Contractor shall also provide proof of professional liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and shall provide to the Town certificates of insurance evidencing the same.

#### **21. ACCURATE INFORMATION, ACCOUNTING, RECORDS AND AUDIT**

The Contractor certifies that all information that will be provided to the Town is true and correct and can be relied upon by the Town in awarding, modifying, accepting services, making payments, or taking any other action with respect to this Contract. Any false or misleading information is a ground for the Town to terminate this Contract and to pursue any other appropriate remedy. The Contractor certifies that its accounting system conforms with generally accepted accounting principles, is sufficient to comply with the Contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

Contractor recognizes that the Town, as a Maryland municipal corporation, is required to respond to Maryland Public Information Act requests. Contractor agrees to cooperate with the Town in providing Town documents and content in possession of the Contractor.

#### **22. TERMS AND CONDITIONS**

The terms and conditions of this document govern in event of a conflict with any terms of the Contractor's proposal, and are not subject to change by reasons of written or oral statements by the Contractor unless the same are accepted in writing. Words and abbreviations which have well known technical or trade meanings are used in accordance with such meanings.

#### **23. INTERPRETATION**

Any questions concerning conditions and specifications shall be directed in writing to the Town Manager or other official designated by the Town. No interpretation shall be considered binding unless provided in writing by the Town Manager or other authorized official of the Town. The execution of this Contract shall be prima facie evidence that the Contractor thoroughly understands the terms of this Contract.

#### **24. AUTHORITY OF THE TOWN MANAGER IN DISPUTES**

Any dispute concerning a question of fact arising under this Contract shall be decided by the Town Manager who shall notify the Contractor in writing of his determination. The Contractor shall be afforded the opportunity to be heard and offer evidence in support of its claim. Pending final decision of the dispute herein, the Contractor shall proceed diligently with performance under this Contract.

#### **25. ERRORS**

The Contractor shall take no advantage of any error or omission in the specifications. This Contract shall not be construed against either party by virtue of the fact that such party or its agent authored all or any part hereof.

#### **26. NO LIMITATION OF LIABILITY**

The mention of any specific duty or liability of the Contractor in any part of this Contract shall not be construed as a limitation or restriction upon any general liability or duty imposed upon the Contractor.

#### **27. GOVERNING LAW**

This Contract is executed in the State of Maryland and shall be governed by Maryland law without regard to its conflict of law provisions. The Contractor, by execution of this Contract, consents to the jurisdiction of the Maryland courts with respect to any dispute arising out of this Contract and further consents to venue in Montgomery County, Maryland.

**28. MODIFICATION**

This Contract may be modified only by written instrument signed by both parties hereto.

**29. NOTICES**

Written notice shall be deemed to have been duly served if delivered in person to the individual or member of the firm or to any officer of the corporation for whom it was intended if delivered or sent by registered or certified mail to the last address known. All notices required or permitted under this Contract shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid to the following:

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**TO TOWN:**  
**Town of Kensington**  
**3710 Mitchell Street**  
**Kensington, Maryland 20895**  
**Phone 301-949-2424**

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**TO CONTRACTOR:**  
**Maier Warner Public Relations**  
**90 Church Street**  
**Rockville, Maryland 20850**  
**Phone 301-424-0600**

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**30. ENTIRE CONTRACT**

This Contract, including the exhibits attached hereto, constitutes the entire Contract between the Town and the Contractor, and the parties shall not be bound by any prior negotiations, representations or promises, not contained herein.

**31. SEVERABILITY**

If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**32. NO WAIVER OF RIGHT**

The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

**33. ENFORCEMENT**

If, at any time, the Contractor is in default of any of its obligations under this Contract, the Town shall be entitled to all expenses, including court costs and reasonable attorneys' fees, incurred in securing the performance of any obligations under this Contract and/or in prosecuting a claim for damages arising from the Contractor's default.

**IN WITNESS WHEREOF**, the Town and the Contractor have executed this Contract under seal as of the date first written above.

**MAIER & WARNER PUBLIC RELATIONS, LLC.**

By: \_\_\_\_\_

Kristine Warner, Partner

**TOWN OF KENSINGTON**

By: \_\_\_\_\_

Sanford W. Daily, Town Manager

		Revised	Thursday, June 14, 2018	
<b>Fee and Budget</b>				
<b>For Fiscal Year 2018-19</b>			<b>Proposed Costs Details</b>	<b>Proposed Costs Totals</b>
Media relations, management fee, content management for social media, meetings, copywriting, research, design fees (eblast, website, evite), event planning and public relations			\$36,500	
Website hosting, programming for Explore Kensington			\$3,500	
Facebook promotion			\$1,200	
<b>TOTAL Retainer</b>		>>>>>>>>>>>>>>>>>>>>>>>>>>>>		<b>\$41,200</b>
<b>Additional Marketing Items</b>	<b>Description</b>		<b>Estimated Costs</b>	
Direct mail 10,169 Pieces Each Mailing [10737 Pieces]	Design, both Fall & Spring	\$1,200.00		
	Printing 24000	\$2,400.00		
	List service	\$4,700.00		
	Postage for Both	\$4,500.00		
	<b>Sub Total</b>	>>>>>>	<b>\$12,800</b>	<b>\$12,800</b>
Kensington Bumper Stickers 2018 Magnets	Initial Design-Edits to include 1894-2019 and Tag line.	\$425.00		
FOR: Either Or the Other	Printing 1150	\$1,150.00		
	Printing 2000	\$1,800.00		
	<b>Sub Total</b>	>>>>>>	<b>\$2,225</b>	<b>\$2,225</b>
Set up I pad With MailChimp		\$300.00	\$300	\$300
Updates to Shopping Guide	Edits Events and text per update 3 edits per year	\$450.00	\$450	\$450
Dining Guide Update:	Update Restaurants,	\$150.00		
	Collect and update photos	\$150.00		
	Print 1000	\$475.00		
	<b>Sub Total</b>	>>>>>>	<b>\$775</b>	<b>\$775</b>
Store Reporter	Placement in 6 Issues:	\$1,150.00	\$1,150	\$1,150
Montomgery County Show	Placement in 6 Issues:	\$570.00	\$570	\$570
Retainer, Webpage & Facebook			\$41,200	
Estimated Cost for Scope of Work Projects		\$18,270.00	\$18,270	\$18,270
Estimated Total Cost				\$59,470
Resolution Amount				